

RICKY J. JOHNSON
Claimant

J. E. DUNN CONSTRUCTION COMPANY
Respondent

ST. PAUL FIRE & MARINE INSURANCE CO.
Insurance Carrier

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ORDER

Respondent contends that claimant should either be denied an award altogether, having suffered an intervening injury on the same date as the alleged accident, or, in the alternative, should be awarded an 11 percent impairment to the right upper extremity at the level of the shoulder, based upon the opinion of the independent medical examiner, Sergio Delgado, M.D.

The Appeals Board (Board) heard oral argument on March 30, 2004. Julie A.N. Sample recused herself from this proceeding, having been involved in the litigation as an administrative law judge. Jeff Cooper was appointed as Board Member Pro Tem for the purposes of this appeal.

APPEARANCES

Claimant appeared by his attorney, Davy C. Walker of Kansas City, Kansas. Respondent and its insurance carrier appeared by their attorney, John David Jurcyk of Roeland Park, Kansas.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge.

ISSUES

What is the nature and extent of claimant's injury and disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

The Board finds the testimony of Chris D. Fevurly, M.D., board certified in internal medicine and occupational medicine, and Sergio Delgado, M.D., a board certified orthopedic surgeon (who examined claimant during an independent medical examination at the request of the Administrative Law Judge), to be the most credible opinions in the record. Neither Dr. Fevurly nor Dr. Delgado found claimant to have suffered any permanency to his neck or upper back as a result of the accident of February 15, 2000. While the Board notes that P. Brent Koprivica, M.D., claimant's examining physician, did find permanency to the neck and upper back, the Board determined that Dr. Koprivica's opinion was substantially discredited when information regarding Dr. Koprivica's examination of claimant in 1995 was provided. Dr. Koprivica had no recollection of that earlier examination. Additionally, when he was asked to compare the impairment ratings from 1995 to the current injury, Dr. Koprivica computed the same percentage of impairment for both injuries.

The Board finds that claimant proved that he suffered accidental injury to his right upper extremity at the level of the shoulder, but failed to prove any involvement with the neck or upper back. The determination by the Administrative Law Judge that claimant has

an 18 percent impairment to the right upper extremity at the shoulder is supported by the evidence and is adopted by the Board.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Kenneth J. Hursh dated October 7, 2003, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Davy C. Walker, Attorney for Claimant
John David Jurcyk, Attorney for Respondent
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director